

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

Case No. 05-70011

WILLIAM KIBNER,

Defendant.

ORDER GRANTING PLAINTIFF'S "MOTION FOR SUMMARY JUDGMENT"

Pending before the court is Plaintiff United States of America's "Motion for Summary Judgment," filed on October 11, 2005. Defendant has repeatedly failed to respond to discovery demands, orders of this court, and to the summary judgment motion now at issue. Plaintiff's motion is well-supported and will be granted.

On January 4, 2005, Plaintiff filed a complaint against Defendant William Kibner, pursuant to 26 U.S.C. § 7401, to recover unpaid trust fund recovery penalty taxes assessed against Defendant for the tax period ending September 30, 1992 and unpaid federal income taxes for the tax years 1993 and 1998-2003. (Pl.'s Compl. at 1-3.)

On June 13, 2005, Plaintiff served Defendant with a copy of its "First Set of Interrogatories," "First Requests for Admissions," and "First Request for Production of Documents." Because Defendant had not responded during the time provided by the Federal Rules, Plaintiff requested by letter to counsel that Defendant respond as soon as possible. Defendant did not respond. Subsequently Plaintiff again contacted

defense counsel relating to its discovery requests, but still no response has been received. Because of these repeated failures to respond, this court granted Plaintiff's motion to compel responses to Plaintiff's "First Set of Interrogatories" and its "First Request for Production of Documents," requiring such to be provided no later than November 3, 2005. Plaintiff states that still no responses have been provided. Finally, although a response to the motion for summary judgment was due within twenty-one days after service, the court's docket shows that no response has been filed.

Accordingly, Defendant is deemed to have admitted all of the material facts necessary to support a judgment against him. Fed. R. Civ. P. 36. Plaintiff is entitled to judgment against Defendant for this reason, as well as because Defendant failed to appear at his own deposition. Fed. R. Civ. P. 37(d).

For the reasons persuasively stated in Plaintiff's brief in support of the motion for summary judgment,

IT IS ORDERED that Plaintiff's motion [Dkt. #12] is GRANTED.

A judgment will be entered in the amount of \$123,027.41, plus statutory additions and interest from June 6, 2005, as reflected on Plaintiff's Decl. of Debt, Ex. I, for the taxable years 1993, 1998, 1999, 2000, 2001, 2002, and 2003, as well as the trust fund recovery penalty assessed against the defendant for the quarterly tax periods ending September 30, 1991, December 31, 1991, and September 30, 1992.

Plaintiff's counsel is directed to prepare a proper form of judgment for entry forthwith.

S/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: November 30, 2005

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, November 30, 2005, by electronic and/or ordinary mail.

S/Lisa Wagner
Case Manager and Deputy Clerk
(313) 234-5522